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IN THE

Supreme Court of the United States

October Term, 1960

No. 398

ARTHUR WURDEMANN and
WURDEMANN-HEILM CORPORATION,
Petitioners,

vs.

CLIFFORD R. HEILM, DAVID R. HEILM and
THE JESMER CORPORATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF OF THE JESMER CORPORATION IN OPPOSITION

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OPINION BELOW

The opinion of the Minnesota Supreme Court is reported at 102 N.W. 12d 811.

JURISDICTION

The judgment of the Minnesota Supreme Court was made and entered on May 20, 1960 (Petition, pages 38, 39).

The Petition for a Writ of Certiorari was filed and docketed in this Court on September 8, 1960.

The jurisdiction of this Court is invoked under Title 28, U.S. Code, Sec. 1257, Subd. 3.

QUESTIONS PRESENTED

1. Whether the Petition for Certiorari was timely filed.

2. Whether the petitioners presented for decision to the Minnesota Supreme Court any federal question of substance.

3. Whether the petitioners were denied the protection of the 14th Amendment to the U.S. Constitution.

U.S. CONSTITUTION PROVISION

Amendment XIV to the U.S. Constitution, provides in pertinent part, as follows:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law. * * *"

STATE OF MINNESOTA CONSTITUTION

Article VI, Section 1, of the State of Minnesota Constitution provides as follows:

> "The judicial power of the State shall be vested in the Supreme Court, district courts, courts of probate, justice of the peace, and such other courts inferior to the Supreme Court, as the legislature may from time to time establish by a two-thirds vote."

STATUTES INVOLVED

Petitioners have quoted Minnesota Statutes which in the opinion of your respondent are not pertinent to this inquiry.

STATEMENT

Your Respondent, The Jesmer Corporation, in 1954 was the owner of the Piedmont Apartments in St. Paul, Minnesota (R. 477, f. 3). On December 31, 1954, it leased the building to Clifford Hjelm and David Hjelm. It also gave them an option to purchase the premises (R. 128 to 131). In April 1957 the Hjelms assigned the lease and option to petitioners Wurdemann (R. 143). In June 1957 Jesmer Corporation instituted an unlawful detainer action in a justice of the peace court for recovery of the property for violations of the terms and conditions of the lease (R. 164, 165). A jury trial was had and a verdict returned for The Jesmer Corporation. Judgment of restitution was ordered (R. 24, 25, 27). No appeal was taken by Wurdemann from that judgment (85 N.W. (2) 207). Wurdemann then commenced three actions in the District Court (a court of general jurisdiction) requesting that court to declare that the lease and option to purchase under which it held possession of the property was in fact an agreement to purchase the property and that the justice of the peace court had no jurisdiction to render the judgment above stated; also to set side the justice of peace court judgment claiming it was obtained by fraud and conspiracy of The Jesmer Corporation and the Hjelms to deprive it of its interest in said lease, and for other relief. The District Court without a jury heard the matter at considerable length (March 5th, 1958 to May 2nd, 1958) (R. 127, ff. 2, 3; R. 59, ff. 1, 2). The Court permitted

Wurdemann to re-try the Justice Court action and was extremely liberal in permitting testimony bearing upon the intent of the parties in negotiation and execution of the lease and option, and also on the claim of fraud and conspiracy.

No claim or contention was made in the District Court by Wurdemann that he or they were denied the protection of any federal law or any article or provision or amendment of the United States Constitution.

The District Court made Findings and ordered judgment for The Jesmer Corporation on all issues (R. 58 to 64, ff. 1, 2, 3; R. 65 to 84; ff. 1, 2, 3).

Appeal was taken by Wurdemann from that judgment to the Minnesota Supreme Court (R. 126, ff. 1, 2, 3; R. 127, ff. 1, 2). No federal ground for reversal was urged upon the Minnesota Supreme Court.

The Minnesota Supreme Court by its Opinion of March 18, 1960, affirmed the judgment of the District Court (Appendix A, Petition for Certiorari, pages 21 to 36). The Minnesota Supreme Court did not apply federal law, nor was it necessary to apply federal law to reach its decision.

In Wurdemann's petition for rehearing to the Supreme Court of the State of Minnesota (page 24) a claim is made that the Court is denying to Wurdemann the protection of the 14th Amendment to the U.S. Constitution by stating matters in the opinion as facts that are not in the record, and by failing to re-open the case and permitting the petitioner to introduce additional testimony (Petition for Rehearing, page 27).

The Minnesota Supreme Court denied the petition for rehearing without opinion (Appendix B, page 27, Petition for Certiorari).

ARGUMENT

1. The Petition for Certiorari was not timely filed.

Title 28, U.S. Code, Section 1257, provides in part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court."

The Supreme Court of the State of Minnesota is the highest court of the State of Minnesota in which a decision could be had.

Article VI, Section 1, of the State of Minnesota Constitution provides:

> "The judicial power of the State shall be vested in the Supreme Court, district courts, courts of probate, justice of the peace, and such other courts inferior to the Supreme Court, as the legislature may from time to time establish by a two-thirds vote."

In the case of *In Re: Petition for Integration of Bar of Minnesota*, 216 Minn. 195, 12 N.W. (2) 515, the Minnesota Supreme Court enunciated its authority as follows:

> "The Supreme Court is thereby made the final authority and last resort in the protection of the human, political and property rights guaranteed by the constitution, and it was intended thereby to be at all times free from the dangers of encroachment either by the legislature or executive branches of the government."

The final judgment of the Supreme Court of Minnesota was rendered on May 20th, 1960 (see Appendix C, Petition for Certiorari, pages 38, 39).

Title 28, U.S. Code, Section 2101, subd. (c), provides that the Petition for Certiorari must be taken or applied for within ninety (90) days after entry of the judgment.

We compute 90 days from May 20th, 1960, to be August 18th, 1960.

The Petition for Certiorari was served on the undersigned attorneys for The Jesmer Corporation on September 2nd, 1960, and filed and docketed with the Clerk of this Court on September 8th, 1960.

It would appear therefore that petitioners have not made timely application to this Court for a Writ of Certiorari in compliance with *Rule 22* of this Court and *Section 2101 (c), Title 28, U.S. Code. Rust Land Co. vs. Jackson*, 250 U.S. 72, 63 Law Ed. 850; *Gypsy Oil Co. vs. Escoe*, 275 U.S. 499, 72 Law Ed. 393; *Dept. of Banking vs. Pink*, 317 U.S. 264, 87 Law Ed. 254.

The inclusion of the "Mandate" of the Supreme Court of Minnesota (Petition for Certiorari, Appendix D, page 40) and the judgment in the District Court (Appendix E, Petition for Certiorari, page 41) leads your Respondent to believe that petitioners contend the 90 days runs from the entry of the judgment for costs and disbursements in the District Court. The opinion of this Court in *Department of Banking vs. Pink*, 317 U.S. 264, 87 Law Ed. 254, supra, appears to answer this contention to the contrary.

The record here shows that the judgment of the Supreme Court of Minnesota fully adjudicated the rights of the parties, and said judgment is not subject to further review by a Minnesota state court.

Your Respondent therefore respectfully contends that this Court has not jurisdiction to grant the petition.

2. No federal question of substance was presented to the Minnesota courts.

It can be seen that the dispute in the Minnesota courts was between landlord and tenant. It originated in the justice of the peace court on unlawful detainer action. The landlord prevailed, and the tenant, the petitioners herein, then instituted actions in the District Court to declare invalid the judgment of the justice of peace court. The landlord, your respondent here, again prevailed and the tenant (the petitioners here) then appealed to the Minnesota Supreme Court from that judgment.

The record and briefs in the Minnesota Supreme Court contain no mention or reference to federal law or Constitution, and the Minnesota Supreme Court in its opinion affirming the District Court decision applied Minnesota substantive law, and no reference is made to federal law.

We read the decisions of this Court as dictating that before the Supreme Court of the United States submits to hear an appeal or petition for writ of certiorari to review a state court judgment, it must affirmatively appear from the record that a federal question was presented to the highest court of the State having jurisdiction, and that its decision of the federal question was necessary to its determination of the cause. *Durley vs. Mayo*, 351 U.S. 277, 100 Law Ed. 1178. This affirmative requirement does not appear in this record.

The only reference to federal law is stated in the petition for re-hearing to the Supreme Court of Minnesota * * * petitioners contending that the Supreme Court of Minnesota considered matters not in the record, and also that it was a denial of due process to fail to re-open the case to allow petitioners to introduce additional testimony. Respondent

contends that such contentions in the petition for re-hearing do not qualify as "litigated" questions of federal law. *Radio Station-WOW, Inc. vs. Johnson*, 326 U.S. 120, 89 Law Ed. 2092; *Hanson vs. Deuckla*, 357 U.S. 235, 2 Law Ed (2) 1283.

We therefore contend that this requirement has not been satisfied by petitioners, and that this Court has not jurisdiction to grant the writ.

3. Petitioners were not denied due process by the Minnesota Supreme Court.

Even if it could be said that petitioners complied with the requirements as to timely application and that the contentions that were raised in the petition for re-hearing were raised during the trial of the case and presented to the Supreme Court of Minnesota, we still contend this Court would not have jurisdiction to entertain the petition.

The alleged federal question is not such a "special and important reason" to warrant consideration by this Court. *Rice vs. Sioux City Memorial Park*, 349 U.S. 70, 99 Law Ed. 897. The only claims made in the petition for re-hearing was that the Supreme Court of Minnesota considered evidence not in the record (Petition for Rehearing, page 24, "He—Jesmer—did not know prior to the trial that Hjelm would testify") and that it was denial of due process for the court to fail to order opening of the case to permit testimony bearing on the conviction of Clifford Hjelm (Petition for Rehearing, page 27).

The quoted testimony above given, is substantially stated in the record (R. 545, ff. 1, 2) and the pro-offered testimony to the District Court upon which petitioners based a request to re-open the case, was considered by the trial court.

It went to the weight to be attached to Clifford Hjelm's testimony, and the Supreme Court of Minnesota held it was within the discretion of the trial court to deny the relief requested (Petition, page 36). We contend the Supreme Court of Minnesota did not error in the respects stated, but even if it did, we understand the law to be that the Constitution of the United States does not guarantee that the decisions of the State Court shall be free from error. *Worcester County Trust Co. vs. Riley*, 302 U.S. 292, 82 Law Ed. 268. Litigants who do not prevail generally complain that the court did not consider all of the evidence, or considered matters not in the record. Unless the claim can be supported by pointing to a substantial deviation from the record we doubt the 14th Amendment can be looked to for relief, and especially so where no substantial federal question is involved.

Respondent therefore respectfully contends that petitioners' claim of being deprived of rights guaranteed to it by the 14th Amendment of the U.S. Constitution is wholly without merit.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari be in all respects denied.

Respectfully submitted,

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